REMARKS

Claims 1-49 remain under active prosecution in the present application. Claims 6, 17 and 29 have now been amended. Applicants respectfully assert that all amendments are supported by the original disclosure and do not introduce new matter. Moreover, Applicants further respectfully assert that the amendments merely clarify the scope of the claims.

In the subject Office Action dated February 6, 2006, setting forth a restriction requirement under 35 U.S.C. § 121, please consider the following remarks:

The Examiner has requested that Applicants make an election, under 35 U.S.C. §121, to one of the following groups of claims that are alleged to constitute distinct inventions:

I. Claims 1-8 and 44-49, drawn to an agent, and an anti-tumor agent, classified in class 530, subclass 350.

II. Claims 9-43, drawn to a method for modulating the distribution of an inner leaflet component in a plasma membrane of a cell of a subject, a method of modulating tumor volume in a subject and a method of treating a cancer in a subject, classified in class 514, subclass 2.

Applicants elect the claims of Group I for further prosecution in the present application, reserving the right to prosecute the remaining claims in a separate divisional application.

Furthermore, the Examiner states that if applicants elect Group I for prosecution on the merits, applicants are further required to select a single SEQ ID NO from SEQ ID NOS. 1 and 2. The Examiner states that this election should not be construed as an election of species and is a restriction requirement. The Examiner contends that each of the SEQ ID NOS. is structurally and functionally distinct molecule that would require separate search.

Applicants respectfully traverse this restriction requirement. First, the sequences represented by the two sequences of SEQ ID NOS. 1 and 2 represent the protein and proprotein of the *very same* protein. That is the two sequences of SEQ ID NOS. 1 and 2 represent

prosaposin and saposin, respectively. Prosaposin is proteolytically processed into four saposins, saposins A, B, C, and D.

The two sequences of SEQ ID NOS. 1 and 2 are inherently so closely tied that full search of the art for one sequence would necessarily include the second sequence. In this case, because of the overlap in the search between the two sequences, considering both sequences together would not place an undue burden on the Examiner and, therefore, the Restriction Requirement is improper under the provisions of MPEP § 803 (even assuming that these groups represent independent or distinct inventions).

Second, the two sequences represented by SEQ ID NOS. 1 and 2 are, as indicated by the Examiner, classified in the same class and subclass. Even if one assumes *arguendo* that the two sequences of SEQ ID NOS. 1 and 2 represent independent or distinct inventions, these two sequences should still be considered together. MPEP §803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Any search of the art for one of the two sequences of SEQ ID NOS. 1 and 2 will inherently have such overlap as to make any search virtually indistinguishable.

Finally, the sequences are members of a Markush group. According to MPEP 803.02, if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits (even assuming that these represent independent or distinct inventions). In such a case, the Examiner will not require restriction. Here, where there are *merely two sequences* and where the two sequences are so closely related, the restriction requirement should be removed.

For all of the above reasons, Applicants believe that the restriction requirement between SEQ ID NOS. 1 and 2 is improper. Accordingly, it is respectfully requested that the restriction requirement of the be withdrawn.

In the event the Examiner maintains the restriction requirement, Applicants elect SEQ ID NO:2 for further prosecution in the present application, reserving the right to prosecute the

remaining claims in a separate divisional application.

Applicants' undersigned attorney has made a good faith effort to be responsive to the restriction requirement made in the Office Action dated February 6, 2006. If the Examiner would like to discuss the restriction requirement or to have applicants provide any clarification of its terms, she is invited to contact Applicant's undersigned attorney at the phone number given below.

Applicants understand that the examiner has required restriction between product and process claims and that where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04.

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicants encourage the Examiner to contact their representative, Stephen R. Albainy-Jenei at (513) 651-6839 or salbainyjenei@fbtlaw.com. The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

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By _____

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